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No. 07-401

FILED

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAREN G., *et vir*,

Petitioners,

v.

HURON COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES and THE CRADLE SOCIETY,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Ohio, Huron County

BRIEF IN OPPOSITION ON BEHALF OF THE CRADLE SOCIETY, LEGAL GUARDIAN OF M.A.G. AKA M.A.B.

SUSAN GARNER EISENMAN
3363 Tremont Road, Suite 304
Columbus, Ohio 43221
(614) 326-1200

Counsel for Respondent, The Cradle Society, Legal Guardian of M.A.G. aka M.A.B.

Attorney of Record

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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

When a pre-adoptive placement is made based on an inaccurate and incomplete homestudy and the placement is found to be adverse to the child's best interests due to abusive and chaotic conditions in the home, may the child properly be found to be dependent and placed in an appropriate, alternative home in a prompt manner?

LIST OF PARTIES

The Petitioners are Sharen and Michael Gravelle, the pre-adoptive parents. Respondents are the Huron County Department of Job and Family Services, which holds temporary custody of Mercy Anne, and The Cradle, which is the legal guardian of Mercy Anne under Illinois law.

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BRIEF IN OPPOSITION ON BEHALF OF THE CRADLE, LEGAL GUARDIAN OF MERCY ANNE GRAVELLE AKA MARY ANNE B.

The Cradle, legal guardian of Mercy Anne Gravelle, aka Mary Anne B., respectfully submits this brief in opposition to the petition for writ of certiorari filed by the Gravelles.

THE OPINION BELOW

This case is a consolidated appeal of eleven cases involving eleven children. Ten of the children were the adoptive children of Michael and Sharen Gravelle. The eleventh child, Mercy Anne G. aka Mary Ann B., had a different status. She was in the home as a pre-adoptive placement.

Mercy Anne has resided in Ohio since August 4, 2004. The Cradle, a licensed Illinois adoption agency, is her legal guardian. T.2912. The Cradle is legally empowered by Illinois law to consent to the adoption of this child as a result of a voluntary relinquishment by both of her birthparents. She was placed with the Gravelles as a pre-adoptive child based upon a homestudy purportedly done by a licensed Ohio agency selected by the Gravelles. T.48, T.978-9., T.993, T.1222, T.2983. The homestudy was flawed and inaccurate.

The Gravelles had legal custody of this child pursuant to an entry of the Circuit Court of Cook County – Custody Division at the time of the trial in

this matter. T.2985. This award of custody was made in an adoption action filed by the Gravelles. T.2998. When the Ohio court became involved, the Illinois court stayed the proceeding there. The Cradle requested the permission of Illinois court to withdraw the Cradle's consent to the adoption. T.2986. Subsequent to Judge Cardwell's decision in the court below, the Illinois court granted leave to The Cradle to withdraw its consent for the Gravelles to adopt Mercy Anne and dismissed their adoption petition. Appendix A.

The Huron County Juvenile Court, on December 10, 2005, found eight children to be abused due to physical and psychological abuse. The court found the other children to be dependent because they lived in a home in which a child was abused. In addition, all of the children were found to be dependent because the conditions in the home were such that the state should assume custody in the best interest of the children. Finally, the court made specific finding as to Mercy Anne. These findings indicated that the pre-adoptive placement procedure had been flawed by a false and/or fraudulent homestudy.

The court then permanently committed the ten older children to the custody of Huron County Children Services terminating the Gravelles' parental rights. In the matter of Mercy Anne, the court merely placed the temporary custody of the child with Huron County Children Services while The Cradle maintained guardianship. The Gravelles did not have parental rights as to Mercy Anne.

The decision of the Huron County Court was upheld by the Sixth District Court of Appeals.

The Ohio Supreme Court declined *certiorari*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

First Amendment

Children's Right to Maintain Associational Rights

Mercy Anne has a constitutional right to maintain her relationship with her current foster-to-adopt parents – with whom she has resided twice as long as she resided with the Gravelles.

Fourteenth Amendment Due Process Clause

Right to a Prompt Hearing and Resolution

Mercy Anne has a right to a prompt resolution of her unfortunate pre-adoptive placement with the Gravelles. Consolidation of her case with the other children in the Gravelle home has worked a hardship on her. The Gravelles never had parental rights as to Mercy Anne. The delays involved in this matter have infringed on Mercy Anne's rights.

42 U.S.C. § 1305 Safe Families and Adoption Act

The federal adoption policy mandates that children who cannot be cared for by their biological

families should be promptly placed in alternative permanent placements.

O.R.C. 2151.04(C)

All of the children in the Gravelle home were found to be dependent because the conditions in the home were "such as to warrant the state, in the interest of the children in assuming the children's" custody. Clearly the conditions in the Gravelle's home warranted the state's assuming custody. Mrs. Gravelle herself testified that the conditions in the home were chaotic and unhealthy.

O.R.C. 2151.031(B) and (D)

This provision involving child abuse and "child endangering" is the linchpin on the appellant's argument in this appeal. The trial court's finding as to O.R.C. 2151.03(B) and (D) are not essential to the court's ultimate decision to place temporary custody of Mercy Anne with Huron County Children Services, or to permanently commit the other children.

O.R.C. 2151.414 and 2151.419

This section is not applicable to Mercy Anne's case. These provisions deal with permanent court commitment and termination of parental rights. The Gravelles never had parental rights as to Mercy Anne.

STATEMENT OF CASE

Mercy Anne Gravelle is a three-and-a-half-year-old child. T.46. Mercy Anne was born with medical special needs, including a cleft palate, a heart defect, and feeding issues. T.1224.

At both adjudicatory and dispositional phase, the court heard testimony that the home study submitted to the Illinois court, The Cradle, and the Ohio and Illinois Interstate Compact Offices was incomplete and contained false information. The court found that the homestudy was false and possibly fraudulent. T.3015. The home study contained no mention of the four older Gravelle children – Joe, Jenna, Jesse, and Tim. These were the biological children of the Gravelles. The home study also failed to mention the problems involving these older children, which resulted in the Gravelles being placed in the Lorain County Children Services system. T.2984, T.3016. The home study did not reference Michael Gravelle's admission of molesting his older (now adult) daughter, his failure to successfully complete sexual offender treatment, the failure of both of the Gravelles to participate in Tim's out-of-home treatment, inappropriate sexual contact between Joe and Lisa, and the fact that most of the older set of children left or were forced out of the Gravelle home by the Gravelles prior to their eighteenth birthdays. All of this information came out at the trial. T.3016.

The home study stated that the Gravelles had experienced no crises since the prior home study,

while Sharen Gravelle testified that the home was in an on-going state of crisis, which resulted in the use of cages. During her testimony, Mrs. Sharen Gravelle confirmed that the home study statement was inaccurate. T.3395-6, T.3254.

Further the home study referenced a supportive relationship between the Gravelles and the larger community, while the testimony at hearing reflected a family that had isolated itself from a community the Gravelles perceived as hostile. T.539, T.885, T.1046, T.3393, T.3394.

Judge Cardwell found that Mrs. Gravelle admitted to many inaccuracies in a home study affidavit she signed. *See*: State's Exhibit 9. "Either Mrs. Gravelle purposefully lied on a statement under oath or she was extremely nonchalant about the accuracy of the information she was providing for a home study that would permit her to adopt children. Either of these scenarios is troubling to the court and certainly reflects adversely on Mrs. Gravelle's credibility." Huron County Juvenile Court decision of March 20, 2006.

In the Gravelle home, Mercy Anne was one of eleven children who resided there. T.47. At the adjudication hearing the testimony of the witnesses established that the home contained alarmed beds, boxed cages/enclosures. T.507-510, T.515-T.525, T.212, T.798. These alarmed beds which contained limited bedding, were used for sleeping and as punishment for six of the eleven children. T.508-9, T.511-512,

T.513-516, T.517, T.530, T.548, T.527, T.30-31, T.45-46, T.679, T.931. They were made of unpainted or unfinished wood and chicken wire. T.506, 512, 514, 515, 518, 32-36. The cages/beds were not properly ventilated or lit. T.31. They smelled of urine. T.31. There were sharp, wire tips exposed on the inside of the beds/cages where the children pulled the wire away from the frame. T.31, T.222-3.

The expert witnesses for the state testified that this arrangement was inappropriate and abusive. Based upon the expert's examinations of the children, none of the children seemed to need such harsh measures. T.908, 919, T.772, T.795-99. They testified that such beds were virtually never an appropriate remedy for children. T.873, T.890, T.916.

Dr. Ronald Hughes testified that the cages were an extreme measure only warranted when:

> 1.) The child is totally unpredictable or an active danger;
>
> 2.) When less restrictive means have been tried and were unsuccessful;
>
> 3.) When closely monitored by an adult and prescribed by a mental health professional. T.873.

In fact, Dr. Hughes viewed the cages as "per se" abusive and neglectful. T.890. He stated that the cages violate the children's trust and made attachment issues more difficult. He felt that the cages may well have aggravated the children's condition rather

than helping them. T.883. Based upon the psychological assessment done by Dr. Hughes' associates, he felt that the cages were not appropriate for any of the Gravelle children. T.908, T.916.

Dr. Benninger did psychological assessment on five of the children; Michael, Simon, Samson, Elijah and Serah. He felt that none of these children presented a risk which necessitated a caged bed. T.636, T.681-2, T.685, T.697-699.

Dr. Keith Hughes did psychological assessments on five other Gravelle children, Jordan River, River Jordan, Abba, Sharen and Joni. He testified that none of these children were appropriate for alarmed beds. T.772, T.795-99. In particular they were inappropriate for Joni, a Down's Syndrome child, who was described as easy to manage. The alarmed bed was counter-indicated and isolating for Joni. The bed could lead to self-stimulatory behavior. He specifically stated that nothing in her profile merited a caged bed, although the Gravelles had her in such a bed. T.786.

Michael Gravelle, the son, also testified that Joni Girl was placed in a caged bed. T.517. Social worker Jo Johnson testified that she had seen Joni in a caged bed on her first visit to the home. T.38.

The Gravelle's expert witness was Elaine Thompson, LISW. Ms. Thompson testified that she was in the house on a weekly basis working with the children. T.1254, T.1327-8. She testified that she did not suggest or prescribe the caged beds for the children. T.1265. However she understood why the parents might have

used them. T.1196, T.1279, T.1331. She felt the main concern was safety, particularly with Michael. She based her understanding of the safety concerns largely on statements made to her by Sharen Gravelle, the mother. T.1268, T.1332-3. Elaine Thompson felt that Sharen was a reliable reporter. T.1260, T.1335-6, T.1344. On cross examination, Elaine Thompson admitted a number of the statements made by Sharen Gravelle, particularly to the worker who did the homestudy for Mercy Anne's adoption, were inaccurate. T.1347. Likewise, Elaine Thompson was at a loss to explain Ms. Gravelle's divorce affidavit, which stated that several children had told Ms. Thompson that Michael Gravelle, the father, was abusive toward them. T.1381. Ms. Thompson had not testified to any abuse by Michael Gravelle, the father, nor had she reported any abuse to the authorities.

Elaine Thompson testified that she believed that she had superior knowledge to the prosecution experts in that she knew the children better and had seen them over a period of time. T.1365-6. However, Elaine Thompson was unaware that Joni was sleeping in a caged bed. Ms. Thompson testified that had she been aware of the use of the caged bed for Joni, she would have advised the parents not to place Joni in such a bed. She deemed the caged bed as totally inappropriate for Joni. T.1341-2.

In addition to the issues of the caged/alarmed beds there was other testimony of harsh punishment/abuse within the Gravelle home. Michael, the son, testified:

1) That he was made to stand outside in cold weather in wet clothes when he wet the bed. T.535-36.

2) That he was confined to the bathroom for 81 days for wetting himself and to the caged bed for two weeks for taking food. T.530, T.537, T.552.

3) That he had to have permission to move from room to room in the house or to enter the kitchen and that he was punished for taking food. T.549-550.

4) That the parents had used the garden hose outside on Serah when she did not bathe regularly. T.538.

5) That the parents administered harsh physical punishments to the other children for relatively minor offenses, including placing their faces in the toilet (Serah and Joni), slamming Simon's head against the wall and spanking the children with a board when they left their beds without permission. T.541-2, T.556, 528.

The psychologist, Keith Hughes also testified that Sharen, the daughter, was confined to the bathroom for several weeks for failing to maintain appropriate hygiene during her menstrual period. T.935. The Gravelle expert witness also testified that Sharen was confined to the bathroom as punishment for improper menstrual hygiene. T.1338.

Since Mercy Anne's removal from the Gravelle home, she has resided in one foster-to-adopt home. She has flourished there. The foster parents wish to

adopt her. She has now resided in this foster home longer than she resided with the Gravelles.

REASONS FOR NOT GRANTING THE PETITION

This case has an unusual and extreme fact pattern. A decision in this case would do little to clarify child welfare litigation.

The neglect standard, of which the appellant complains, was not a necessary finding in order for the court to place Mercy Anne in the temporary custody of Huron County Children Services or for the court to terminate the Gravelle's parental rights to the other children. The deposition could have been made under the finding of dependency which merely required that the state's action was warranted by the children's best interests. The dependency finding which the court also made as to all eleven children was fully supported by Mrs. Gravelle's own testimony.

I. THE FINDING OF DEPENDENCY AS TO MERCY ANNE WAS WELL SUPPORTED BY THE RECORD.

Placing custody of Mercy Anne with Huron County Children Services did not involve the termination of any parental rights.

The Huron County Juvenile Court found that all of the children in the Gravelle home were dependent

because their condition or environment was such to warrant the state, in the interest of the children, to assume guardianship. O.R.C. 2151.04. Mercy Anne was also found to be dependent because she had resided in a home in which another child was abused or dependent and the facts surrounding the abuse or dependency make it likely that she was in danger of abuse or dependency from the same parent. O.R.C. 2151.04(D)(1,2).

> The Court heard expert testimony about the harmful, detrimental "*milieu*" that existed in the Gravelle household at the time of removal. This environment was created by a combination of many factors, such as: six of the children slept in and were punished in boxes rigged with *extremely* loud alarms; one box contained a hole in the mesh wiring that even after rudimentary repair left sharp wires protruding *into* the box; two other children (each aged three) were at times barricaded in their room in which electrical wires were exposed in a wall and in reach; humiliating discipline was administered; the upstairs in general and several boxes in particular contained an overwhelming odor of urine; several of the children had sparse bedding; the upstairs contained no working smoke detectors; and, the fact that the eleven children's adoptive parents were "overwhelmed" by the challenge of maintaining order in the home.

A determination of dependency based on R.C. 2151.04(C) 'must be based on the condition or environment of the child, not the fault of the parents.' *In re Ohm* (1 July 2005) 2005-Ohio-3500, 05-LW-2974, Hocking App. No. 05CA1. Even so, 'a court may consider a parent's conduct insofar as it forms part of the child's environment has the *potential for causing an adverse impact,* a finding of dependency is appropriate. *In re Hauenstein* (7 June 2004) 2004-Ohio-2915, 04-LW-2421, Hancock App. Nos. 5-03-38 and 5-03-39.

After applying the law to the facts presented at the adjudicatory hearing, the Court clearly, convincingly and without question finds that **all** of the children's conditions and environment were such as to warrant the state, in the interests of the children, in assuming the children's guardianship. R.C. 2151.04(C). In addition, **Mercy Anne Gravelle, Abba Gravelle** and **Sharen Gravelle** are dependent children under R.C. 2151.04(D) (1,2), because as household residents they were in peril of being exposed to the same disciplinary techniques and environment that led to certain of their siblings being endangered. . . .

Over time many factors contributed to the Gravelles becoming overwhelmed by the daunting challenge of raising the growing number of at risk, special needs and/or developmentally delayed children in their household. In this overwhelmed state, the Gravelles made a series of poor parental decisions that

> were detrimental to the children and led to an appropriate intervention by the Huron County Department of Job and Family Services and the Huron County Sheriff (Huron County Juvenile Court decision, March 20, 2006).

At the dispositional hearing, the court made the following additional findings as to Mercy Anne –

> – Mercy Anne was placed in the Gravelle home as a result of an incomplete and inaccurate home study completed by Adopt American Network, a licensed Ohio adoption agency.
>
> – The home study failed to disclose material information concerning the Gravelles and their home.
>
> – The pre-adoptive placement with the Gravelles is no longer appropriate or in Mercy Anne's best interest.
>
> – The Gravelles are not appropriate adoptive parents for Mercy Anne . . .
>
> – The Gravelles' adoption of Mercy Anne has not been finalized. . . .
>
> – Mercy Anne Gravelle is a dependent child as defined by R.C. 2151.04(D).
>
> – It is in the best interest of Mercy Anne Gravelle that she be placed in the temporary custody of the Huron County Department of Job and Family Services and that . . . another adoption plan be developed for her.

(Huron County Juvenile Court decision, March 20, 2006).

These findings were well supported by the record. The testimony of the homestudy agency, the placing agency, the therapist treating the family and Sharen Gravelle (the mother) all agreed that the homestudy was incomplete and inaccurate and failed to disclose material information. Sharen Gravelle, the mother, had been the primary source for the information in the homestudy. The Court found she was careless as to the truth or that she was intentionally deceptive. Decision of Huron City Juvenile Court, March 20, 2006.

Susan Vernon of The Cradle, Mercy Anne's Illinois guardian, testified that the placement would not have been made to begin with if all of the pertinent information had been included such as –

> – Michael Gravelle (the father) admitted history of sexual abuse for which he had never completed treatment.
>
> – The general chaos in the home.
>
> – The social isolation of the family.
>
> – The prior involvement with the county children's services board as to the older children.

T.2984, T.3016.

The Huron County expert Ronald Hughes also testified that the home was not a healthy environment for a young child. T.2986.

Pursuant to O.R.C. 2151.35, the court must find that the child is a dependent child by clear and convincing evidence. *In re Misty Angles*, 1992 Ohio App. LEXIS 4863 (1992). Clear and convincing evidence is such evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the conclusion to be drawn. *In re C. M.*, 2006 Ohio 1908, 2006 Ohio App. LEXIS 1752 (2006), citing to *In re Adoption of Holcomb*, 18 Ohio St. 3d 361, 18 Ohio B. 419, 481 N.E.2d 613 (1985).

Where the proof required must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof. * * * However, it is also firmly established that judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by the court. *In the Matter of Dalton Dale Crow*, 2002 Ohio 3282, 2002 Ohio App. LEXIS 3431 (2002), citing to *Cross v. Ledford*, 161 Ohio St. 469, 53 Ohio Op. 361, 120 N.E.2d 118 (1954).

In order to reverse the decision of the trial court, the appellate court must decide that the trier of fact lost its way and created such manifest miscarriage of justice that the only decision that can be made is to reverse to the trial court. *In re C. M.*, 2006 Ohio 1908, 2006 Ohio App. LEXIS 1752 (2006). To come to such a

conclusion, the appellate court must find that the judgment is against the manifest weight of the evidence, using the same standard of review that is used in a criminal case:

> 'an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and the new trial ordered.'

State v. Otten, 33 Ohio App.3d 339, 340, 515 N.E.2d 1009 (1986).

Further, a juvenile court's decision will be reversed only in a case where the trial court abused its discretion. *In re Pieper Children*, 85 Ohio App.3d 318, 330, 619 N.E.2d 1059 (1993); *In the Matter of Rachelle Surfer*, Franklin App. No. 97APF09-1158 (1997). Abuse of discretion is more than simple error. It implies that the court acted arbitrarily, capriciously, or unreasonably. Absent extreme circumstances, an appellate court will not second-guess determination of weight and credibility. *Sykes Constr. Co. v. Martell*, 9th Dist. Nos. 15034 and 15038, 1992 Ohio App. LEXIS 93, at *23-24 (1992).

Therefore the decision of the Huron County Juvenile Court should not be disturbed.

II. BECAUSE OF MERCY ANNE'S STATUS AS A PRE-ADOPTIVE CHILD, THE GRAVELLES DID NOT HAVE PARENTAL RIGHTS NOR DID A PERMANENT COURT COMMITMENT OCCUR IN REGARD TO MERCY ANNE. THUS THE APPELLANT'S ASSIGNMENT OF ERROR AS TO THE APPLICATION OF THE PERMANENT COMMITMENT LAW IS INAPPLICABLE TO MERCY ANNE.

Mercy Anne was a one-year-old child at the time she was removed from the Gravelle home. She was in the home on a pre-adoptive placement. Her adoption was not final.

Because the court's decision was supported by other credible evidence, it should be upheld. *C.E. Morris Co. v. Foley Construction Co.*, 54 Ohio St. 2d 279 (1978).

The Appellants in the Assignment of Error as the termination of parental rights, quotes at length statutory and case law concerning permanent commitment. These laws and cases are not applicable to Mercy Anne's temporary court commitment which is governed by O.R.C. 2151.353 as opposed to 2151.413. *Santosky v. Kramer,* 102 S. Ct. 1388 (1982); *see also Tingley v. Williams City Department of Human Services*, 100 Ohio App.3d 385 (1995).

Likewise Appellant's argument that no other appropriate adoption home is available is inapplicable to Mercy Anne. Mercy Anne's foster parents are eager to adopt her. By the time this appeal is decided,

Mercy Anne will have been in the new foster home twice as long as she was with the Gravelles. She has flourished in her new foster-to-adopt home.

III. MERCY ANNE'S RIGHT TO HAVE HER BEST INTEREST CONSIDERED AND TO ESTABLISH A PERMANENT HOME ARE CONSTITUTIONALLY PROTECTED.

The trial court determined that it was in Mercy Anne's best interest that an alternate adoption plan be made for her. Such a plan does in fact exist with Mercy Anne's current foster-to-adopt parents. Mercy Anne has resided in the current home for twice as long as her placement with the Gravelles. The Gravelle home was found to be inappropriate for Mercy Anne. The judge's ruling is consistent with the federal mandate that children who cannot be cared for by their natural families should be placed in alternate permanent placements as soon as possible. Safe Families and Adoption Act of 1997, 42 U.S.C. § 1305.

In reaching this decision the court recognized Mercy Anne as an individual possessed of her own interests and right to a suitable, stable and permanent family. This right is constitutionally founded in the promise of an inalienable right to life and liberty. These rights are both protected and substantive.

It has long been recognized that children are persons with rights protected by the United States Constitution. *Planned Parenthood of Central Missouri*

v. Danforth, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority."); *In re Gault*, 387 U.S. 1, 13 (1967) (stating that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"). The realm of personal family life is a fundamental interest protected by the Fourteenth Amendment to the United States Constitution. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (there is an "historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment"); *Smith v. Organization of Foster Families*, 431 U.S. 816, 845 (1977) (the protected familial relationship may arise from other than biological ties, *e.g.* foster care); *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987) (stating that a child's interest in continued companionship and society of . . . caregivers is a cognizable liberty interest). This fundamental right belonging to both caregivers and children also has been explicitly recognized by states other than California. *See, e.g., Reist v. Bay Circuit Judge*, 241 N.W.2d 55, 62 (Mich. 1976) (holding that the rights of parent and child in their "fundamental human relationship" are encompassed within the term "liberty"); *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981) (recognizing liberty interest in mutual relationship between child and parent).

The United States Supreme Court in *Smith v. Organization of Foster Families*, 431 U.S. 816, 844 (1977) stated that "biological relationships are not the

exclusive determination of the existence of a family." As the Court recognized,

> the importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in "promot[ing] a way of life" through the instruction of children, as well as from the fact of blood relationship.
>
> No one would seriously dispute that a deeply loving and interdependent relationship between an adult and a child in his or her care may exist even in the absence of blood relationship.

Id. (citation omitted). *See also Lehr v. Robertson*, 463 U.S. 248, 249, 261 (1983) (a "developed parent-child relationship merits constitutional protection); *Roberts v. United States Jaycees*, 468 U.S. 609, 619-20 (1984) ("family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life."). *Id.* at 664-65 (citations omitted).

These considerations should apply whenever courts consider efforts by noncustodial contestants to assert custodial or visitation rights with a child who is being adopted or is eligible for adoption. The child's interest in having his immediate familial relationship undisturbed must prevail in the face of unwarranted

intrusion by those who do not have an established relationship with the child. *See, e.g., Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993) (striking down Tennessee's former grandparent visitation statute as unconstitutional when applied to a stable family absent a showing of substantial harm to the child if visitation were terminated).

Finally, a child's liberty interest in family stability must be considered when a challenge results in protracted litigation. Children are the innocent victims of such litigation and the grief that it inflicts. They should not be awarded to the "winner" as if they were a prize. Children are blameless. Mercy Anne's current foster to adopt family is her psychological family. She has resided with them more than twice as long as she resided with the Gravelles. Depriving a child of her established, psychological family ties without consideration of the harm she will suffer infringes upon her procedural due process rights. Therefore, under some circumstances, the purported rights of prior caregivers may be limited because of a child's independent right to remain in the current custodial environment she has known. *See e.g., In re Appeal in Pima County Juvenile Severance Action No. 2-114487*, 876 P.2d 1121 (Ariz. 1994) (rights of a father who fails to grasp parental "opportunity quickly, diligently, and persistently" may be terminated if the court finds that it is in the child's best interest); *In re Baby Boy C.*, 581 A.2d 1141 (D.C.App. 1990) (a presumptively fit thwarted father's right to veto a proposed adoption may nonetheless be

overcome by clear and convincing evidence that it is in the best interest of the minor for the adoption to proceed); *In re Robert O.*, 604 N.E.2d 99 (N.Y. 1992) (promptness of biological father's actions to assert parental rights is measured in terms of the baby's life, not by the onset of the father's awareness); *State ex rel R.E.*, 645 So.2d 205 (La. 1994) (putative father has burden of persuading court that he preserved his opportunity interest by taking concrete steps to preserve his relationship to the child); *Sorentino v. Family & Children's Society of Elizabeth*, 367 A.2d 1168, 1170 (N.J. 1976) (because the child had been in the custody of the adoptive parents for over two and a half years, the adoptive parents were entitled to a hearing on "whether transferring custody of the child to plaintiffs . . . will raise the probability of serious harm to the child"); *Sorentino v. Family & Children's Society of Elizabeth*, 378 A.2d 18 (N.J. 1977) (Upon remand and appeal, custody with the adoptive parents was undisturbed); *In re Guardianship of J.R.*, 416 A.2d 62 (N.J. Super. 1980) (following *Sorentino*, and holding that the rights of a prior caregiver may be terminated without a showing of unfitness where "foster care has been permitted for so extended a period as to have resulted in the virtual creation of a new parent-child relationship, albeit not one based upon blood but upon love, affection and need, and a trial judge, with evidential justification, concludes that disruption of that new relationship, suddenly or gradually, would damage the child").

In the instant case, the Gravelles failed to provide a valid homestudy recommending their home. As a result of the flawed homestudy and the chaos in their home, Mercy Anne was removed. She then formed an alternative familial relationship with her current foster-to-adopt parents. It is inappropriate to disturb this new, healthy relationship.

In conclusion from, Mercy Anne's perspective, the relationship with her current foster to adopt family is not different from the most traditional parent-child relationships protected in the past from state interference by courts. *See e.g., Santosky v. Kramer*, 455 U.S. 745 (1982); *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); and *Meyer v. Nebraska*, 262 U.S. 390 (1923). This Court is urged to recognize that Mercy Anne has a constitutionally based liberty interest in the protection of her current established family, a right which is at least equal to, and even outweighs, the rights of others who would claim a "possessory" interest in this child.

CONCLUSION

For the reasons stated above, the Respondents request that the motion for certiorari be dismissed and that Mercy Anne at last be allowed to proceed with a new adoption plan for her life. It has long been the desire of her birthparents and her guardian, The

Cradle, that Mercy Anne have the benefits of a suitable permanent home.

Respectfully submitted,

SUSAN GARNER EISENMAN
Ohio Supreme Court
Number 0020121
Attorney for Respondent,
The Cradle Society,
Legal Guardian of M.A.G.
aka M.A.B.
3363 Tremont Road, Suite 304
Columbus, Ohio 43221
(614) 326-1200

Submitted – October 25, 2007

Attorney No. 50124

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – COUNTY DIVISION

IN RE THE ADOPTION OF M.A.B., A Minor.	)))	NO. 04 COAD 1625

ORDER

THIS CAUSE coming before the Court upon the Agency Motion to Withdraw Consent and to Dismiss Cause, due notice having been given, the Cradle and the Gravelles appearing by counsel, the Guardian ad Litem appearing in person, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, for the reasons stated by the Honorable Susan Fox Gillis in open court, that[; The Huron County Ohio Court having jurisdiction]

(1) The Cradle is granted leave to withdraw its consent to the pending adoption by the Gravelles;

(2) This adoption case is dismissed with prejudice.

ENTER:

/s/ Susan Fox Gillis
JUDGE

Date: (Entered Mar. 28, 2008)

KATHLEEN HOGAN MORRISON
KATHLEEN HOGAN MORRISON, P.C. (50124)
Attorney for The Cradle Society
2100 Three First National Plaza
Chicago, Illinois 60602
(312) 977-4477

[Approved /s/ E.J. O'Connell 3-28-06]